(B)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A.NO. 1363/2005

SINGLE BENCH

Appellants : 1. Shyam Sunder
S/o Insharam Lodhi,
Aged about 35 Years,
R/o Village – Chichka,
Occupation – Agricultuarist,
Tehsil – Khairagarh,
Dist : Rajnandgaon-(C.G.)

Defendant no.1

Defendant no.2 2. Sakha Ram @ Radhelal
S/o Kaluram Lodhi,
Aged about 35 Years,
Occupation – Agriculturaist,

Defendant No.3 3. Chandra Kumar
S/o Gendlal Lodhi,
Aged about 45 years,
Occupation – Agriculturist,

Appellant / Defendant No.2 & 3 are R/o Village Korray Tehsil Chuikhadan, Dist : Rajnandgaon-(C.G.)

P.R. No. 1315/05 Bagnish
Presented by Shri. Reginish
dated 07/05/05

Versus

Respondents : 1. Surya Vijay Singh,
S/o Late Shyam Karan Singh Kshatri
Aged about 45 years,
Occupation – Cycle Repair, Shopkeeping

Plaintiff No.1

Plaintiff No.2 2. Smt.Anuj Kunwar Bai
Widow of Late Shyam Karan singh Kshatri,
Aged about 65 years,
Both R/o Khairagarh,
Dist : Rajnandgaon-(C.G.)

Defendant No.4b 3. Niraj Singh
S/o Chandra Vijay Singh,
Aged about 45 years,

Defendant No.4c 4. Dhannu Singh
S/o Chandra Vijay Singh,
Aged about 33 years,

Respondent / Plaintiff o.3 & 4 are R/o Village Khairagarh, Tehsil Khairagarh, Dist : Rajnandgaon

07/5/05

CLERK to A.G. BILASPUR

Defendant No.4d	5.	Smt.Nirmala Singh W/o Rajendra Singh Bais, Aged about 40 years, R/o Bhadgaon Khurd, Dist : Balaghat-(M.P.)
Defendant No.4e.	6.	Smt.Anjani Singh, W/o Lakhan Singh, Aged about 36 years, R/o Dipra Para, Potiya Road, Near Mahesh Chana Batta, Durg-(C.G.)
Defendant No.4f.	7.	Miss.Neeta Singh D/o Chandra Vijay Singh, Aged about 38 years, R/o Khairagarh, Turkaripara, In front of Arjun Sindhi Aara Machine Khairagarh, Dist : Rajnandgaon-(C.G.)
Defendant No.5.	8.	Dig Vijay Singh, S/o Devkaran Singh Kshatriya Aged about 46 years, Occupation – Agriculturalist, R/o Khairagarh, Dist : Rajnandgaon-(C.G.)
Defendant No.6	9.	Ari Vijay Singh @ A.S.Chandel, Aged about 45 years, Occupation – Service, R/o Qr.No.802, N-2V Sector, Piplani, Bhopal-(M.P.)
Defendant No.7	10.	Narendra Vijay Singh Aged about 42 years
Defendant No.8.	11.	Ashwani Vijay Singh Aged about 40 years
Defendant No.9	12.	Bharat Vijay Singh C/o Dig Vijay Singh, R/o Khairagarh , Distt:- Rajnandgaon(C.G.)"
Defendant No.10	13.	Ravi Ditya Singh S/o Vijay Karan Singh Kshetriya, Aged about 43 years, Occuaption – Service R/o Near Raj Kumar College, Country Liquor Shop, Raipur-(C.G)

Amendment incorporated vide Ct. dt. 20/11/05
3/12/05

Sd/-
AR(J)

Defendant No.11	14.	Sudheer Singh S/o Vijay Karan Singh Kshetriya, Aged about 42 years Occupation – Service at Country Liquor Shop, R/o Behsar Tehsil & Dist : Raipur, Post – Tilda Neora-(C.G.)
Defendant No.12	15.	Kishore Kumar S/o Vijay Karan Singh Kshetriya, Aged about 40 years, Occupation – Agriculturalist,
Defendant No.13	16.	Smt.Sarla Bai Widow of Late Shri Vijay Karan Singh Kshetirya, Aged about 65 years, Respondent / Defendant No.15 & 16 are R/o Khairagarh, Dist : Rajnandgaon-(C.G.)
Defendant No.14	17.	Hem Karan Singh S/o Ragunath Singh Kshetriya Aged about 55 years, Occupation – Service, R/o Wadwa Chowk, In the House of Lal Vijendra Singh, Bank Manager, Ward Dongargarh, Tehsil – Khairagarh, Dist : Rajnandgaon-(C.G.)
Defendant No.15	18.	State of M.P. Now State of Chhattisgarh, Through Collector Rajnandgaon,
Defendant No.17	19.	Krishna Lata Bai W/o K.V.singh, Aged about 60 years, R/o Through – K.B.P.T.I Teacher, Near Old Bus Stand Dongargarh, Dist : Rajnandgaon-(C.G.)
Defendant No.18	20.	Smt.Pushplata Bai W/o Lal Deepak Singh, Aged about 53 years R/o B.N.C.Mills, Ghari Khata, Pehali Para, Rajnandgaon-(C.G.)

Defendant No.19	21.	Suraj Lata Bai, W/o Thakur Chandra Vijay Singh, Aged about 50 years, R/o Near Saraswati Shishu Mandir, Khairagarh, Dist : Rajnandgaon-(C.G.)
Defendant No.20	22.	Aslata Bai W/o Shyam Kumar Singh, Aged about 45 years, R/o Kurrabhat, Tehsil Khairagarh, Dist – Rajnandgaon-(C.G.)
Defendant No.21	23.	Purnima Singh W/o Lal Chandra Kumar singh Aged about 48 years, R/o Raj Family Khairagarh, Dist : Rajnandgaon-(C.G.)
Defendant No.22	24.	Smt.Nidhi Singh D/o Late Vijay Karan Singh, Aged about 42 years, W/o Lal Mahendra Singh, (Police Station Wireless Set), R/o Choukhadiya Para Rajnandgaon-(C.G.)

APPEAL UNDER SECTION 104 R/W ORDER 43 RULE 1 CODE OF CIVIL PROCEDURE 1908

(27)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक M.A NO 1363/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

13/04/2006

Shri Rajnish Singh Baghel, Counsel for the appellants.

None for the respondents.

Heard on admission.

Respondents No. 1 and 2/plaintiffs instituted a civil suit for declaration and partition claiming 1/4th share of the suit land in the Court of Civil Judge, Class I, Khairagarh stating that the suit land was paternal property of plaintiffs and defendants No. 4 to 15, but Dev Karan Singh alienated the suit land by a registered sale deed dated 22/04/1970 in favour of appellants/defendants No. 1, 2 and 3 who by fraud got their names mutated in revenue records on 17/09/1975. They further stated and claimed that the suit land may be divided into four equal parts and 1/4th share of it be given to them and till actual possession is delivered mesne profits may be allowed in their favour. The civil suit was registered as Civil Suit No.39-A/84. On a dispute being raised by the opposite party regarding limitation the trial Court framed preliminary issue and holding the suit barred by limitation dismissed the suit vide order dated 20/09/2000.

Being aggrieved by that order, Plaintiffs/respondents No. 1 and 2 filed an appeal which was allowed by the appellate Court vide

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

impugned order dated 3/2/2005 on the ground that the question of limitation raised in the suit being a mixed question of facts and law which requires evidence for decision and therefore, set aside the order passed by Civil Judge, Class I, Khairagarh and remanded the case to decide the issue of limitation along with other issues on the basis of evidence adduced by both the parties. Being aggrieved by the impugned order dated 3.2.2005 passed in Civil Appeal No.1-A/2001 by Additional District Judge, Khairagarh, this appeal has been filed.

From the arguments advanced by learned counsel for the appellants and the facts mentioned in the memo of appeal, it is evident that the plaintiffs/respondents No. 1 and 2 filed a suit for declaration and partition alleging the alienation dated 20/04/1970 and mutation dated 17/09/1975 a result of fraud. Property being ancestral property they claimed their share. For cause of action and limitation, plaintiffs took shelter of want of knowledge of alienation. Apparently, the question of limitation in the instant suit was a mixed question of facts and laws. Therefore, when the cause of action arose and whether the suit has been filed within limitation, both these questions without recording evidence cannot be decided.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक,

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In my opinion, the impugned order passed by Ist Appellate Court does not suffer from any infirmity which may call for any interference by this Court in its appellate jurisdiction. In the result, the appeal deserves to be dismissed summarily and is accordingly dismissed. Sd/- V.K. Shrivastava Judge	

Raju

[पीछे देखिये